IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 149 OF 1999

Yadu Sambhaji More ..Appellant

versus

1. Shivaji Dnyani Patil
2. New India Assurance Co. Ltd.
3. Smt. Subhadra Yadu More ..Respondents

Mr. G. S. Hegde for the Appellant.

Mr. M. G. Barve for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 24TH MARCH,2005

ORAL JUDGMENT :

1. Heard Mr. Hegde for the appellant - original claimant in this appeal arising out of the judgment of the Motor Accident Claim Tribunal, Satara and also Mr. Barve for Respondents i.e. owner and Insurance Company.

2. The accident that occurred in this case was very peculiar. A petrol tanker No.MXL 7461 was proceeding from Pune to Bangalore by National Highway No.4. The said tanker dashed against the rear portion of another truck which was coming from opposite direction. The petrol tanker turned turtled. Petrol started leaking from the tanker. Many villagers assembled to collect the petrol and suddenly explosion took place or the patrol caught fire as a result of which 46 persons died. All of them filed separate claim petitions and the present appellant was one of the petitioner before the MACT Satara. His claim petition came to be dismissed and hence he has filed this Appeal.

3. The claim was mainly against the insurance company and the owner of the petrol tanker. Claim was strongly opposed by both of them. The Tribunal therefore framed following issues:

> 1. Whether it is proved that the incident of giving dash to one truck by the petrol tanker MXL 7461, took place at about 3.00 a.m. on 29.10.1987?
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> 2. Whether it is proved that the applicant, who went near the scene of accident sustained the injuries at about 7.00 A.M.

due to explosion and fire to petrol tanker MXL 7461?

3. Whether sustaining of injuries was arising out of use of the petrol tanker and was the result of negligence on the part of the petrol tanker driver?

4. Whether the Tribunal under the Motor Vehicles Act, has no jurisdiction to try and entertain his petition?

5. Whether the applicant was entitled to claim compensation?

4. The Tribunal gave finding in affirmative on Issue nos. 1, 2 and 4, and negative findings on crucial issues 3 and 5, and dismissed the claim petition and therefore this Appeal.

5. From paragraph 14 of the judgment of the Tribunal, it is clear that there were in all 44 claim petitions filed by different victims. Main claim petition was 168 of 1988 and issues were framed in that petition and the Tribunal rightly concluded that decision of claim petition No.168 of 1988 and the issues therein will decide the fate of all other claim petitions because all those claim

petition Nos. 168 to 1988 to 179 of 1988 and 181 of 1988 to 210 of 1988 were arising out of one and the same accident.

6. So far as accident is concerned, it is in two parts. Firstly, there was a dash between the petrol tanker and truck and it was on 29.10.1987 at about 3 a.m. and it was this accident that resulted in tilting of the truck on the road and then petrol started leaking, Villagers assembled to collect petrol and then petrol caught fire wherein there was huge loss of human life. The present appellant - claimant sustained injuries.

7. While deciding the main issue No.3 i.e. whether injuries were sustained by the claimant out of the use of the petrol tanker and whether it was a result of negligence on the part of the driver of the tanker, the Tribunal relied upon the evidence of Opponents - Respondents. Opponent - Respondent No.1 i.e. owner examined himself i.e. Shivaji Dnyani Patil as opponent witness No.1 at Exhibit 32, and one Dhondiram Nanas Mali as opponent Witness No.2, who was working on the tanker involved in the accident. The said Dhondiram Mali was also the driver of the tanker. It is necessary to find out what the driver has to say about the entire episode before considering the case of the appellant.

8. Dhondiram Mali O.W. No.2 has stated that on the date of the accident he was driving the tanker from Bombay to Miraj. The tanker was loaded with 12,000 litres of petrol at Shivadi. He left Shivadi at 1 p.m. on 28.10.1987. He had some halts in between and then at about 2.30 a.m. he reached near Village Kavthe. He was driving towards Miraj and with a speed of 40 (The tribunal has noted at this juncture that the witness was not describing whether speed of 40 was in kms. or miles per hour), then at that juncture another vehicle approached from opposite direction, he signaled dim and full but the other vehicle did not give any signal. There was a large heap of rubble towards his left side. Some work of elevating of the road was in progress and as the vehicle from the opposite direction was heading towards him, he swerved to the left. But even then the truck or vehicle coming from opposite direction hit the back portion of right wing of the tanker. It was a truck loaded with onions. The impact was between the rear portion of the truck and the rear portion of the tanker. As a result of the impact and due to the heap of rubble to the left side, his tanker tilted on its left wing i.e. cleaner side.

9. Driver Mali has further stated that he had suffered injuries to his back and his head, Cleaner Dattatraya Khatave also suffered injuries to the

right arm. He came out from the portion of front wind-screen. He waited near the vehicle and sent the cleaner to give telephonic message to the owner Shivaji Patil. He has further stated that his tanker was resting on the left side of the road in a ditch about 5 ft. below the road level. The tanker had four openings and four compartments and he noticed that from the second opening the petrol was leaking. He tried to tighten the lid but he could not prevent the leakage and he asked the cleaner to report the matter to the police station.

10. In the meanwhile another tanker of Kolhapur Shetkari Sangh arrived there from Bombay side. One Shrike was the driver of that vehicle and one Kale an Officer of Indian Oil Company was also in that tanker. They assured him that they will report the matter to the police station and asked him to wait near his tanker. Then after 15 minutes one more tanker owned by one Dadage of Sangli arrived at the spot then cleaner of this tanker i.e. involved in the accident and Dadage went to village Kavthe for giving telephonic message to Patil. All the five persons i.e. Witness Mali, his cleaner, Dadage, his driver and his cleaner waited near the vehicle throughout the night.

11. Mali has further stated that at about 6 a.m.

movement of the people was seen near the petrol tanker. One person had come with a tin of water and started pouring petrol in it. He was asked not to take petrol, but soon about 50 people came from the village. Mali contends that he was informing the people that petrol was highly inflammable and they should not collect the petrol, but nobody paid attention to him. People beat them with whatever they had, they took them to road and at that time the petrol tanker caught fire. It was a sudden fire. There was a fire extinguisher in his vehicle but that was on the other side of the vehicle and it was pressed under the vehicle.

12. He has further stated that there was a red signal painted on the petrol tanker with the sign of skull and writing ’Khatra", and the tanker because of the fire was fully destroyed.

13. It is the manner in which the accident had occurred i.e. two accidents occurred, one because of the dash by the vehicle coming from opposite direction, and the other because of the explosion.

14. The crucial question that is raised in this appeal is whether in the circumstances the Tribunal was justified in dismissing the application on the ground that the accident had not occurred while the

petrol tanker was being used. The second question that would arise whether in the circumstances the owner or the insurance company can be held liable.

15. Mr. Hegde counsel for the appellant firstly contended that this issue "whether the vehicle was in use or not" was decided by the Supreme Court in a judgment reported in **1991 ACJ 777 Shivaji Dayanu Patil and Anr. vs. Vatschala Uttam More**. This matter before the Supreme Court arose from the same accident. It was under no fault liability. The question before the Supreme Court involved was interpretation of the words **"arising out of the use of motor vehicle"** contained in Section 92-A of the Motor Vehicles Act, 1939, When the petitioners in that matter filed an application for no fault liability under Section 92-A. All those claim petitions were decided by the same Tribunal and the applications were dismissed on the ground that the explosion could not be said to be an accident arising out of the use of the petrol tanker and therefore provisions of Section 92-A of the Act were not attracted. The Tribunal was of the view that the explosion and the fire took place after about four hours, has no connection whatsoever with the accident which took place at 3 a.m. and therefore explosion and the fire was altogether an independent accident. The Tribunal also observed that the

villagers tried to take benefit of the earlier accident and tried to pilfer petrol from the petrol tanker when there was friction which caused ignition and explosion and since an outside agency was responsible, which created situation, the explosion could not be said to be an accident arising out of the use of the tanker.

16. Aggrieved by this order of the Tribunal, the claimants preferred Appeal before this High Court. The High Court allowed the Appeal disagreeing with the finding of the Claim Tribunal and therefore the matter went to the Supreme Court at the instance of the owner of the vehicle Shivaji Patil. Supreme Court after considering all the facts and circumstances, the provisions of Section 92-A and the various other Judgments and the facts of the case, viz. people pilfering petrol from the tanker, uphold the judgment of the Single Judge of this Court and also interpreted the words **"arising out of the use of a motor vehicle"** and dismissed the Petition.

17. Mr. Hegde therefore on the basis of the aforesaid judgment of the Supreme Court which arose from the same accident involved in this appeal, strenuously urged that the point whether the petrol tanker was in use has been conclusively decided by

the Supreme Court and therefore now this court cannot come to any other conclusion on the basis of the submissions made by Mr. Barve.

18. Secondly, Mr. Hegde contended that the petrol tanker was insured with the insurance company. The owner of the vehicle has received compensation for the same from insurance company- the respondents in this appeal about the loss of his tanker in the said accident, and therefore the insurance company was liable to pay compensation to the claimant. He also contended that even though the driver of the petrol tanker and other witnesses were examined by the respondents - opponents, their evidence was contradictory about the manner in which the explosion took place and therefore according to him that story of the respondents - opponent was liable to be rejected and the judgment of the Tribunal was liable to be set aside.

19. As against this, Mr. Barve contended that the judgment of the Supreme court, referred to above, Shivaji Patil vs. Vatschala More, that arose out of this accident was a judgment in an application under Section 92-A. Therefore it was a judgment against the interlocutory order or it was a judgment before the evidence was recorded, and as such the judgment was not binding and this court can

again assess the evidence and come to a different conclusion.

20. Mr. Barve also relied upon the judgment of the Full Bench of this Court reported in **2004 ACJ 35 Divisional Controller, Maharashtra State Road Transport Corporation vs. Bapu Onkar Chaudhari**. In that case question was whether the appeal was maintainable against the order of no fault liability. Single Judge referred the matter to the Division Bench and the Division Bench referred it to the Larger Bench, and Larger Bench held that order passed in application under Section 140 of the Act is an award and therefore no appeal would lie under Section 173 and also held that against an order passed by MACT in an application under section 140 of the Act granting compensation of no fault liability, the appeal would lie to the High Court. Therefore both the issues that were referred to the Full Bench were answered in the negative. While doing so the Full Bench relied upon judgment of the Supreme Court in Shivaji Patil vs. Vatschala More, referred to above, wherein Supreme Court observed as under:

> **"The said object would be defeated if the Claims Tribunal is required to hold a regular trial in the same manner as for**

adjudicating a claim petition under section 110-A of the Act. Rules 291-A, 306-A and 306-B contains adequate provisions which would enable the Claims Tribunal to satisfy itself in respect of the matters necessary for awarding compensation under section 92-A of the Act and in view of these special provisions, the Claims Tribunal is not required to follow the normal procedure prescribed under the Act and the Rules with regard to adjudication of a claim under section 110-A for the purpose of making an order on a claim petition under section 92-A."

21. Mr. Barve, therefore contended that from the aforesaid judgment of the Full Bench and the judgment of the Supreme Court in Shivaji Patil's case and the paragraph quoted above, it will be clear that an order under Section 92-A is an interim order where formal procedure of recording evidence is not to be followed and therefore the judgment of the Supreme Court in Shivaji Patil's case would not be of any help to the claimant. That order of the Supreme Court in Shivaji Patil's case has not decided the issue finally and conclusively. It arises out of an interim order, therefore it is not a conclusive finding of the Supreme Court.

22. Mr.Barve also contended, in addition, that there was no evidence showing about the negligence of the driver of the patrol tanker. According to him, merely because the vehicle is insured the victims of the accident are not entitled to claim as of right but they must also prove the negligence of the driver. He relied upon judgment of the Supreme Court reported in **1977 ACJ 118 Minu B. Mehta and Anr. vs. Balkrishna Ramchandra Nayan and Anr.** This was a matter arising out of Section 110 of the Motor Vehicles Act, 1939. The application came to be filed before M.A.C.T. Mumbai by Dr. Balkrishna Ramchandra Nayan on 14.4.1969. The said Balkrishna was dirving his car. His Nurse Malti Deshmukh was sitting by his side. There were stone dividers in the middle of the road. When the car approached Lotus Cinema the truck owned by the Appellants and insured with the Insurance Company came from the opposite direction in a high speed and dashed against right side of the car. Car was damaged and so also Balkrishna and his nurse Malati were injured. He filed claim petition. Opponents denied the claim. Parties adduced evidence about the negligence. The Tribunal found that accident was due to rash and negligent driving of the lorry. The Supreme Court found that the High Court has given a clear cut finding that the Tribunal has rightly

disbelieved the plea and rightly held that it was the driver of the lorry who was negligent. The Supreme Court therefore concurred with the findings of the Tribunal and High Court that negligence of the lorry driver has resulted in the accident.

23. Supreme Court confirmed the award passed by the Claims Tribunal, that is the main award, and the owner and the insurance company were jointly and severally held liable.

24. The second question was about the direction given by the High Court regarding determination of the liability as between the insurance company and the owner. It appears that Justice Vaidya who deliered Judgment of the Bombay High Court has held **"...In my opinion, public good requires that everyone injured, viz., by the use of motor vehicle, must immediately get compensation for the injury."** The Supreme Court held in paragraph 34 that the reasoning of the Justice Vaidya and another Judge Mridual was not accepted as it is opposed to basic principles of the owner’s liability for negligence of his servant and is based on a complete misreading of the provisions of Chapter VIII of the Act. Ultimately the Supreme Court held **that the view expressed of the learned Judge of the High Court has no support in law and we hold that proof of**

negligence is necessary before the owner of the insurance company could be held to be liable for the payment of compensation in a motor accident claim case. Mr. Barve therefore contended that if there is no evidence showing negligence of the driver, then the claim petition was rightly dismissed and no interference is called for.

25. In the background of these submissions, two questions arise, viz. whether the judgment of the Supreme Court in Shivaji Patil's case is final regarding the expression "use of vehicle" or whether it is an interlocutory order or they are observations in an interlocutory order and hence not conclusions after the trial, and, secondly whether the driver of the petrol tanker was negligent.

26. So far as first aspect is concerned, in my opinion, the submissions made by Mr. Hegde that the Judgment of the Supreme Court in Shivaji Patil vs. Vatschala More, is concluded and final, has to be accepted. It is true that the matter before the Supreme Court was in respect of no fault liability. It is true that the order of no fault liability was an interim order. It is also true that parties had not led evidence at that juncture. But whether the vehicle was in use or not was a question before the Supreme Court and even after evidence that aspect

has not changed. Time at which the accident occurred, viz. catching the fire by the petrol has remained the same. The circumstances preceding this particular point have also remained the same. The manner in which the petrol tanker came near the spot and how it was hit by a vehicle or truck coming from opposite direction also remained the same even after evidence and therefore when facts which were before the Supreme Court have not at all changed inspite of the full trial and evidence, the judgment of the Supreme Court has to be accepted and taken as a concluded judgment so far as the issue as to whether the vehicle was "in use" or "arising out of the use of the motor vehicle", finally and concluding. Secondly, question before the Supreme Court was about the interpretation of the words "arising out of use of motor vehicle". The situation, namely occurring explosion to the petrol tanker has not changed so far as this particular aspect is concerned. Same issue is raised by Mr. Barve as to whether the accident occurred arising out of the use of the vehicle and therefore when the Supreme Court has interpreted the word or phrase "arising out of the use of motor vehicle", and gave its finding and when same issue is involved regarding interpretation, then, in my opinion, it is not necessary to go into that question again and the finding and observations of the Supreme Court are

required to be accepted. I therefore hold that in view of the Supreme Court Judgment in Shivaji Patil v/s. Vatschala More, the issue whether the accident occurred arising out of the use of the motor vehicle stands finally concluded and I hold that the trial court having not considered this important aspect came to a wrong conclusion regarding issue no.3 from the Tribunal, as stated above. These findings are perverse. They are set aside and quashed and it is held since Supreme Court has decided this issue, it is not open to reinterpret the words "arising out of the use of a motor vehicle" and it has to be held that this accident, namely, bursting of petrol tanker occurred out of the use of the motor vehicle.

27. According to Mr. Barve, the petrol caught fire not because of the negligence of the driver but because some one from the huge mob, who has assembled there, threw a burning cigarette and therefore petrol caught fire. This according to him cannot be considered as a negligence of the driver.

28. I have already reproduced the evidence of the driver as above and it will be clear from the aforesaid evidence that initially in his examination in chief driver Mali does not say anything as to how the petrol caught fire. He has further stated in his examination in chief **"I do not know if anybody**

put any spark or the fire was caught, because of heavy crow-bar blow. There was sudden fire." Now when this witness Mali is confronted with his statement to the police and he has contradicted on major and material aspects of his evidence in chief. He admitted when confronted with that statement that he has not narrated to the police that cleaner was sent for reporting the matter but he failed to find out the police station. He admitted that he had not narrated to the police that Kale and Shirke promised him to report the matter to police. Then about beating by people, and all the persons with him persuading the people not to take petrol. He was confronted and he could not give any reasons why those things were not in his statement. He was confronted with portions marked A, B, C and D of his earlier police statement, that as per his examination in chief he had left Shivadi at 1 p.m. In his earlier statement to the police he has stated that he left Bombay at about 4.00 or 4.30 p.m. It was suggested to him. Further the witness has himself admitted that when the tanker tilted as stated by him, petrol started leaking from the tanker. He tried to tighten the lid but he could not prevent the leakage.

29. Opponents examined one Ashok Kale to whom there is a reference by driver Mali. He has stated

that when he came to the spot where the tanker was lying down in tilted position, he found that people had assembled to take the petrol. He also tried to prevent them from doing so. But according to him 15 minutes thereafter he left that spot and had not witnessed explosion. He reported the matter to the police. He was asked that when he was on the spot what the driver of the tanker was doing, and he pleaded ignorance in that regard. It is pertinent to note that nobody was examined by the opponents to show that any message of this accident was given to the police, was in fact given by this witness. He is a person serving with Indian Oil Corporation as an Authorised Officer. No reason given by him why he was travelling in a tanker of Shetkari Sangh, Kolhapur. It was not tanker of the Indian Oil Corporation and therefore though there is no cross examination in that aspect, his appearance in this case as a witness is not found to be genuine appearance but it is an appearance to support the opponents.

30. Thereafter cleaner of the petrol tanker involved in that accident is examined as opponent witness No. 6 Dattatrya Khatare. According to him after a halt at Shirval the tanker started between 11.30 to 12 a.m. He was sleeping in the tanker and he woke up when tanker fell down and it turned on

cleaner's side and his left hand was injured. Driver Mali also came out of the tanker and they say that petrol was coming out percolating from Air-valve of the tanker. According to him at 3 a.m. from Kavathe Village he made a lightening call to the owner at Sangli, then he came back near the tanker. People had assembled in the morning to collect the petrol by buckets and barrels. Somebody hit him with a bucket on his head so he went to the police station. This witness cleaner does not know anything as to how the accident occurred. In the cross examination he could not explain as to why nothing was mentioned by him in his police statement that one person hit him by bucket.

31. Apart from this witness the opponents also examined other witnesses. According to them they were present at the spot. The most important suspicious circumstance that goes against all these witnesses is even though after the petrol caught fire 44 villagers died on the spot within minute, none of these six persons who were allegedly guarding at that time the tanker and preventing people from carrying the petrol got any burn injury. It is a common knowledge that petrol is highly combustible and whatever article and material it touches catches fire and the entire area over which the petrol is spread is engulfed in a fire within

seconds. If the driver Mali, his cleaner and others were taking care of preventing or prohibiting the villagers from taking petrol then there is absolutely no explanation as to how these persons who must be in close vicinity of that particular spot, escaped injuries and the villagers only died in the accident. Not a scratch or not even a single mark of injury is there on the body of these witnesses examined on behalf of the opponents. This is therefore a highly improbable story put forth by the opponents to resist and nullify the claim. Their evidence does not inspire confidence. The witnesses, referred to by me above, do not know how the petrol caught fire. Atleast nothing is stated by them in their examination in chief.

32. Police Officer CID Crime Branch Mr. Hanmant Jagdale was examined as witness No.8 for the opponents to prove FIRs. He had recorded statements of witness Dattatraya Mali and others. He admitted that cleaner did not told him that some persons hit him by bucket. Mali also does not stated that villagers beat him and dragged him and further this police officer states that Mali has in his statement portion marked ’B’ stated that even though petrol was coming out, he did not try to stop it. This goes to show that the story given by Dattatraya Mali that he was assaulted by bucket is not supported by

his evidence and witness Mali who has stated in his evidence that he tried to stop leakage, is falsified by his contradiction.

33. Both these contradictions not only show that witnesses had given evidence contrary to their statement before the police but it also explains that these two witnesses who sweared on oath and told the court that they were taking all precautions to prohibit the villagers from pilferring the petrol, that they did not sustain any burn injury even though there must be a huge fire where 12,000 litres of petrol caught fire and petrol tanker exploded. This shows that at the time of the accident neither the driver nor Mali were present, and they are cooking up story of taking precautions with the help of witnesses, whose presence is doubtful for want of injury. The most important thing that creates doubt about this evidence of these two witnesses and of the witnesses of the opponents who asserted that they were present at the time of explosion is that none of them know how petrol caught fire. If these witnesses i.e. driver and his cleaner were guarding petrol tanker and preventing people they were bound to know how petrol caught fire and who was the person responsible for it. But their ignorance and absence of knowledge proves only one thing that they were not present,

and they are giving evidence in this court only to support the Respondents.

34. Secondly, the cleaner has stated in his evidence that he went to Village Kavathe to give lightening call to the owner. There is nothing on record to show that on the date of the accident i.e. in 1987 there was any lightening call facility available in a village like Kavathe. Further, he does not say whether he actually contacted the owner or not but the owner on the other hand has stated in his evidence that he came to know about the accident from newspaper reports. He does not say anything about receiving call either from the driver or from the cleaner or any one of those 5-6 persons allegedly present in the spot. Further most important thing that is revealed by the FIR, proved on record is that driver Mali has contradicted on a material aspects of the matter. According to driver Mali when the truck from opposite direction was coming he could not take his petrol tanker to the left because there were heap of rubble by the side of the road. PSI Hanmant Jagdale whose evidence is referred to by me above, clearly stated in his cross examination that in the panchnama Exhibit 55 there is no mention that there was any large heap of stone on the left side of the road. He has stated that nothing is mentioned in the panchnama about the heap

of stone because it was not there on the spot. This clearly shows that the attempt of Mali is to shift his responsibility to the driver of the other truck, but he is falsified by this single factor along with others.

35. Shivaji Patil the owner of the vehicle has stated in his evidence that he was at the native place at Shiroli and he learnt about the accident after reading newspaper Local Marathi Daily "Pudhari". He admitted that his claim with the insurance company was settled and he was paid Rs.1,74,000/- towards full and final settlement.

36. From the aforesaid evidence, firstly, it is clear that story given by the driver, about the manner in which the accident took place is falsified because panchnama does not show heap of rubbles by the side of the road. Secondly, driver Mali did not try to stop leakage of the petrol. Thirdly the story of attempts to immediately communicate the explosion to the owner, is falsified, for the reasons stated above. Fourthly, none of the witnesses examined by the opponents, including the driver and the cleaner know the manner in which and the reasons for which the petrol caught fire, and number of material contradictions and omissions in the statements of the driver and the cleaner,

clearly show that they are cooking up a false story in order to save their skin. This is a clear cut negligence of the driver.

37. Reaosns that some other petrol tanker of Shetkari Sangh, Kolhapur, arrived at the scene, is also a cooked up story and the most important fact that falsifies the defence of the respondents is absence of any burn injuries on any of the witnesses examined by the opponents who were present at the time of the accident. Panchnama which was prepared first in order of time of the scene of offence which was shown by the driver of the other truck shows that at the place of the accident tar road was 23 ft. and the kacha road on the east was 10 ft. and west was 7 ft. therefore the road was in all 40 ft. and the truck had dashed on the front side i.e. by driver's side as well as body of the rear portion of the truck was broken. There is another panchnama which mentions that from the point of dash between the tanker and the truck, the tanker went ahead upto the distance of 200 ft. and then turned turtled on the left side. All these circumstances brought on record, therefore, clearly show that it is case of negligence and the defence raised by the respondents is liable to be rejected.

38. Mr. Barve had contended that at the time of

deciding no fault liability negligence may not be a criteria but at the time of final decision of claim petition under the Motor Vehicles Act negligence has to be proved. There is no dispute about the proposition. But that aspect of the matter does not make the judgment of the Supreme Court in Shivaji Patil's case inapplicable to the facts of the case because the Supreme Court was concerned, as held by me earlier, with the interpretation of the terms **"arising out of the use of a motor vehicle",** and that aspect of the matter does not remain changed even after the evidence, therefore that judgment of the Supreme Court is squarely applicable, that decides the issues conclusively and finally and the evidence adduced and submissions made, do not alter it. No submissions were made before me on behalf of the respondents regarding the quantum. Therefore, I pass the following order:

ORDER :

. Appeal is allowed.

Impugned Judgment of the Tribunal dismissing the claim petition is rejected and the claim petition is allowed with costs throughout as prayed in the claim petition.

. Certified copy expedited.

24.03.2005 (D.G. DESHPANDE, J.)